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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>STEPHANIE JAMES,<br><br>Defendant and Appellant. | 2d Crim. No. B234694<br>(Super. Ct. No. YA074994-01)<br>(Los Angeles County) |

Stephanie James appeals a judgment following conviction of first degree burglary (two counts), receiving stolen property, and possession of cocaine base. (Pen. Code, §§ 459, 460, subd. (a), 496, subd. (a); Health & Saf. Code, § 11350, subd. (a).)[1] We modify the judgment regarding possession of stolen property (count 3), but otherwise affirm.

*FACTS AND PROCEDURAL HISTORY*

In 2008 and 2009, Danny Jared James and his sister Stephanie James committed nighttime burglaries of homes in a South Los Angeles neighborhood.[2] On May 6, 2009, Los Angeles County sheriff's deputies caught Danny and his girlfriend, minor R.P., as they left a home on St. Andrews Place. Stephanie waited nearby in a parked, white automobile that contained purloined goods from prior burglaries. During a

[1] All further statutory references are to the Penal Code unless stated otherwise.

[2] We shall refer to the parties by their first names not from disrespect, but to ease the reader's task.

confrontation with the deputies, Danny was shot and wounded. At a joint trial, the prosecutor presented evidence of residential burglaries that the codefendants committed and their possession of stolen property from another burglary, among other crimes.

*Possession of the Espinoza Stolen Property*

*(Count 3)*

On May 3, 2009, Tonette Espinoza and her family were moving into a residence on Ruthelen Street in Los Angeles. In the late evening, Espinoza looked for her purse which she had placed on the living room sofa, but it was missing. She reported the suspected theft to police officers that night. Three days later, Los Angeles Deputy Sheriff Mark Stone recovered Espinoza's wallet, her perfume bottle, a hospital badge from the hospital where she gave birth to her son, and her coin purse from Stephanie's automobile, among other things. Espinoza found a school schedule for R.P. inside the wallet. Espinoza did not know Danny or Stephanie and had not invited them into her home.

*Burglary of the Banks Residence*

*(Count 1)*

Barbara Banks and her family lived on West Imperial Highway in Los Angeles, near the James residence. At approximately 2:30 a.m., on May 6, 2009, Banks arose from bed to tend to her daughter. She noticed that a window was open and that her computer, several purses, and shoes were missing. She notified police officers immediately. Deputy Stone later recovered some of Banks's missing property (a computer, a purse, and pink shoes) from the white automobile that Stephanie was driving. Banks did not know Danny or Stephanie and had not invited them into her home.

*Burglary of the Walker Residence*

*(Count 2)*

Mary Walker lived with her two minor grandchildren and her niece, Sequoia Blodgett, on St. Andrews Place in Los Angeles. At approximately 3:00 a.m., on May 6, 2009, Blodgett became frightened when she heard voices outside her window.

She telephoned for police emergency assistance. Blodgett then heard footsteps inside the residence and she and her family members locked themselves in a bedroom.

Sheriff's deputies responded to Blodgett's report of a burglary in progress and surrounded Walker's residence. Deputies knew the neighborhood as an "extremely high crime area and very active gang area down in South Los Angeles." Deputy Casey Chesier saw Danny setting a flat-screen television set on the ground and R.P. climbing out of Walker's window carrying a DVD player. Chesier illuminated Danny and R.P. with his flashlight and commanded them to drop to the ground. In response, they ran and jumped over a wall in the rear of the property. Chesier gave chase and alerted other deputies stationed nearby that the burglary suspects were running through backyards.

Deputies to the rear of the property saw Danny and R.P. jumping over the wall. R.P. ran toward the white automobile driven by Stephanie, but then turned and ran a different direction. Danny reversed his direction and jumped the wall toward Chesier. Chesier saw Danny pull a dark-colored handgun from his waistband. He ordered Danny to "drop the pistol." When Danny turned toward Chesier, Chesier fired his weapon three times, wounding Danny. Chesier later saw a dark-colored toy water pistol near Danny.

Following the gunshots, Stephanie and her sister, minor E.M., left the white automobile. Sheriff's Deputy Roberto Reyes detained the two women. Stephanie repeatedly asked, "[W]hat happened, what's going on?"

Sheriff's deputies arrested Danny, R.P., and Stephanie. A search of the white automobile in which Stephanie waited revealed property stolen from the Banks and Espinoza burglaries. A later search of Stephanie at the police station revealed rock cocaine hidden in her undergarment.

At trial, Walker and Blodgett testified that they did not know Danny or Stephanie and that they had not invited them to their residence.

Stephanie's mother testified that she telephoned Stephanie at approximately 2:00 a.m. and again at 2:30 a.m. and instructed her to drive E.M. home. Stephanie responded that they were en route.

The jury convicted Stephanie of two counts of first degree burglary, receiving stolen property, and possession of cocaine base. (§§ 459, 460, subd. (a), 496, subd. (a); Health & Saf. Code, § 11350, subd. (a).)[3] The trial court sentenced her to three years four months imprisonment, consisting of a low two-year term for burglary (count 1), one-third the midterm (one year four months) for burglary (count 2), two years to be served concurrently for receiving stolen property (count 3), and one year four months to be served concurrently for possession of cocaine base (count 4). The court imposed a $200 restitution fine, a $200 parole revocation restitution fine (stayed), a $160 court security fee, and a $120 criminal conviction assessment. (§§ 1202.4, subd. (b), 1202.45, 1465.8; Gov. Code, § 70373.) It awarded Stephanie 712 days of presentence custody credit.

Stephanie appeals and contends that: 1) there is insufficient evidence that she committed burglary of the Walker residence; 2) there is insufficient evidence that she committed burglary of the Banks residence; 3) the trial court erred by instructing with CALCRIM No. 376; 4) there is insufficient evidence that she possessed the Espinoza stolen property; and 5) the sentence for count 3 (possessing stolen property) is incorrect. She asserts that the lack of sufficient evidence violates principles of due process of law and the right to jury trial, pursuant to the federal and California Constitutions.

*DISCUSSION*

I.

Stephanie argues that insufficient evidence supports her conviction of burglary of the Walker residence. She points out that mere presence at the crime scene is insufficient to establish guilt as an aider and abettor. (*People v. Beeman* (1984) 35 Cal.3d 547, 560 ["[A]n aider and abettor [must] act with knowledge of the criminal purpose of the perpetrator *and* with an intent or purpose either of committing, or of encouraging or facilitating commission of, the offense"].) Stephanie relies upon her mother's testimony

[3] The jury also convicted Danny as charged, and he appealed separately. On July 24, 2012, we affirmed his conviction. (*People v. James* (B230189) [nonpub. opn.].)

that she was driving E.M. home to explain her presence at the crime scene, as well as the lack of evidence establishing her ownership of the white automobile.

In reviewing the sufficiency of evidence to support a conviction, we examine the entire record and draw all reasonable inferences therefrom in favor of the judgment to determine whether there is reasonable and credible evidence from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Elliott* (2012) 53 Cal.4th 535, 585.) Our review is the same in prosecutions primarily resting upon circumstantial evidence. (*People v. Abilez* (2007) 41 Cal.4th 472, 504.) We do not redetermine the weight of the evidence or the credibility of witnesses. (*Elliott*, at p. 585.) "'Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends.'" (*Ibid.*)

Sufficient evidence supports Stephanie's conviction of the Walker burglary. Stephanie sat in the driver's side of the white automobile and, after she heard gunshots, inquired of sheriff's deputies "what's going on?" As the deputies gave chase to R.P. and Danny, R.P. ran toward the white automobile. Inside the automobile was loot from a residential burglary committed shortly before the Walker burglary; the Banks computer also lay on the back seat. Ownership of the automobile is not necessarily determinative of Stephanie's aiding and abetting because she sat in the driver's seat a short distance from the Walker residence awaiting the return of R.P. and Danny. This evidence supports the jury's determination that Stephanie aided and abetted the burglary by acting as the getaway driver. (*People v. McGowan* (1969) 269 Cal.App.2d 740, 743.)

II.

Stephanie contends that insufficient evidence supports her conviction of burglary of the Banks residence. She points to the lack of evidence that she owned the white automobile or that she was present during the Banks burglary.

Circumstantial evidence may be sufficient to connect a defendant to a crime and may prove his guilt beyond a reasonable doubt. (*People v. Abilez*, *supra*, 41 Cal.4th

472, 504.) If the factual findings are reasonably supported by the evidence and all reasonable inferences therefrom, the opinion of the reviewing court that the circumstances might support a contrary finding does not warrant reversal of the judgment. (*Ibid.*)

Sufficient evidence and all reasonable inferences therefrom support Stephanie's conviction of the Banks burglary. She was the driver of a getaway automobile parked outside the Walker residence. The automobile contained goods taken from the Banks residence shortly before. The Walker and Banks residences were near each other and Danny committed the burglaries using a similar method – late night residential entries in the same neighborhood through unlocked or open windows. "[W]hether one has aided and abetted [a burglary] is a question of fact for the jury to determine from the totality of the circumstances proved." (*People v. Morga* (1969) 273 Cal.App.2d 200, 207 [trier of fact may consider presence at crime, companionship, and conduct of the defendant before and after in determining whether he is aider and abettor].)

III.

Stephanie contends that the trial court erred by instructing with CALCRIM No. 376, "Possession of Recently Stolen Property as Evidence of a Crime." She argues that the instruction did not refer specifically to Espinoza's stolen property and that the jury could have convicted her of possessing stolen property based upon other stolen property. Stephanie asserts that the error denies her due process of law pursuant to the federal and California Constitutions. She also contends that the instruction violates due process of law because it allows an inference of guilt based upon possession of recently stolen property with slight corroborating evidence.

In our independent review, we conclude that there is no reasonable likelihood that the jury applied CALCRIM No. 376 in a manner that violates constitutional principles. (*People v. Welch* (1999) 20 Cal.4th 701, 766 [standard of review]; *People v. Lopez* (2011) 198 Cal.App.4th 698, 708 ["We review de novo whether a jury instruction correctly states the law"].) The trial court instructed with CALCRIM

No. 376, regarding "slight" supporting evidence to allow an inference that defendant knew he possessed stolen property, and CALCRIM No. 1750, regarding the elements of the crime of receiving stolen property. During his opening statement, the prosecutor stated that the count charging receiving stolen property concerned property taken from "that home," referring to the articles taken from the Espinoza home. During summation, the prosecutor referred to the count charging receiving stolen property and described the articles belonging to Espinoza that were found in the white automobile. (*Lopez*, at p. 709 [prosecutor's argument informed jury the specific stolen property on which he relied to prove burglary count].)

Moreover, courts have rejected due process challenges to CALCRIM No. 376 and similar instructions permitting an inference of guilt. (*People v. Lopez*, *supra*, 198 Cal.App.4th 698, 712.) CALCRIM No. 376 "'correctly prohibits the jury from drawing an inference of guilt solely from conscious possession of recently stolen property but properly permits the jury to draw such an inference where there is additional corroborating evidence. As long as the corroborating evidence together with the conscious possession could naturally and reasonably support an inference of guilt, and that inference is sufficient to sustain a verdict beyond a reasonable doubt, we discern nothing that lessens the prosecutions' burden of proof or implicates a defendant's right to due process.'" (*Ibid.*)

IV.

Stephanie argues that there is insufficient evidence that she possessed Espinoza's property with knowledge that it was stolen. (*People v. Myles* (1975) 50 Cal.App.3d 423, 429 ["Mere access or proximity to stolen goods is not sufficient to infer possession; dominion and control must be shown"].) She asserts that the evidence merely raises a suspicion of guilt which is legally insufficient to support a judgment.

The elements of the offense of receiving stolen property are: 1) the property was received, concealed, or withheld by the defendant; 2) the property was obtained by theft; and 3) the defendant knew the property was stolen. (*People v. Grant* (2003) 113 Cal.App.4th 579, 596.) "'Possession of the stolen property may be actual or

constructive and need not be exclusive. [Citations.] Physical possession is also not a requirement. It is sufficient if the defendant acquires a measure of control or dominion over the stolen property.'" (*Ibid.*)

Sufficient evidence and reasonable inferences therefrom support Stephanie's conviction of receiving stolen property. She was the driver of the getaway vehicle that awaited her brother and his girlfriend as they burglarized homes in the South Los Angeles neighborhood. The automobile contained articles stolen from the Espinoza and the Banks residences, including purses, shoes, computers, and electronic goods. At approximately 3:00 a.m., on May 6, 2009, Stephanie awaited Danny's return from the Walker residence. Chased by sheriff's deputies, R.P. ran toward Stephanie and the automobile, but then reversed her direction. This evidence permits the reasonable inferences that Stephanie had a measure of control over the stolen property in the white automobile and that she knew the property was stolen.

Circumstances here differ from *People v. Myles*, *supra*, 50 Cal.App.3d 423, 428-429, where defendant was a passenger in a vehicle containing stolen goods. Stephanie was the driver of a getaway vehicle and had control over the items and passenger (her minor sister) within the vehicle.

V.

Stephanie asserts that the trial court erred in sentencing her to "the low term of two years to run concurrent with the previously imposed sentence" regarding count 3, possession of stolen property. The Attorney General agrees that the low term for receiving stolen property is 16 months. (§ 496, subd. (a).)

The trial court misspoke in imposing the low term of "two years" for receiving stolen property. The court's intent to punish Stephanie by imposition of a low term is evident from its recitation of mitigating factors and the resulting sentencing matrix. It would serve no legitimate purpose to remand the matter for clarification of sentence. In the interest of judicial economy, we modify the judgment regarding count 3.

We modify the judgment to reflect a 16-month sentence for count 3, to be served concurrently, and direct the trial court to amend the abstract of judgment and

forward it to the Department of Corrections and Rehabilitation. The judgment is otherwise affirmed.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Jose I. Sandoval, Judge

Superior Court County of Los Angeles

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Jean Ballantine, under appointment by the Court of Appeal, for Defendant and Appellant.

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